

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

OP.No. 3515 of 2001(R)

PETITIONER:

N.M. GIGIMOL, H.S.A., MATHEMATICS, S.N. VOCATIONAL HIGHER
SECONDARY SCHOOL, NANKICITY, KANJIKKUZHI P.O., IDUKKI. DIST.

BY ADV. SMT.I.SHEELA DEVI
SMT.REJI RAMACHANDRAN

RESPONDENTS:

1. DIRECTOR OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, THIRUVANANTHAPURAM.
2. MANAGER, S.N. VOCATIONAL HIGHER SECONDARY SCHOOL,
NANKICITY, KANJIKUZHI P.O., IDUKKI DIST.
3. ANITHAKUMARI, K.S., H.S.A. MATHEMATICS, S.N. VOCATIONAL
HIGHER SECONDARY SCHOOL, NANKICITY, KANJIKUZHI P.O.,
IDUKKI DIST.
4. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION (T) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

R1 AND R4 BY G.P. SMT. BINDU.
R2 BY ADV. SRI.C.K.VIDYASAGAR
SRI.T.I.ABDUL SALAM
R3 BY ADV. SRI.BENOY THOMAS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 27/02/2007, ALONG WITH OP NO. 21295 OF 2001
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 5815 OF 2001 AND I.A. 8239 OF 2005 BOTH IN OP 3515 OF 2001

DISMISSED

27.2.2007

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE REPRESENTATION DATED 29.6.1998 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P2 TRUE COPY OF THE REPRESENTATION DATED 2.11.1998 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P3 TRUE COPY OF THE REPRESENTATION DATED 16.11.99 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF THE JUDGMENT DATED 30.11.98 IN OP 23610 OF 1998 OF THIS HON'BLE COURT.

EXT.P5 TRUE COPY OF THE PROCEEDINGS NO. C6-1421/HSE/DATED 14.6.1999 ISSUED BY THE FIRST RESPONDENT.

EXT.P6 TRUE COPY OF THE JUDGMENT DATED 11.10.1999 IN OP 22285 OF 1999 OF THIS HON'BLE COURT.

EXT.P6(a) TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD EVIDENCING THE RECEIPT OF A COPY OF THE EXT.P6 BY THE FIRST RESPONDENT.

EXT.P7 TRUE COPY OF THE ORDER G.O.(RT) NO. 4996/99/G.EDN. DATED 11.11.99 ISSUED BY THE GOVERNMENT.

EXT.P8 TRUE COPY OF THE ORDER C2/3069/HSE/99 DATED 17.11.99 ISSUED BY THE FIRST RESPONDENT.

EXT.P9 TRUE COPY OF THE ORDER G.O.MS. 162/98/G.EDN. DATED 13.5.1998 ISSUED BY THE GOVERNMENT.

EXT.P10 TRUE COPY OF THE JUDGMENT DATED 21.1.2000 IN OP 29517 OF 1999 OF THIS HON'BLE COURT.

EXT.P11 TRUE COPY OF THE ORDER G.O. (Rt) 5241/2000/G.EDN. DATED 21.12.2000 ISSUED BY THE GOVERNMENT.

3RD RESPONDENT'S EXHIBITS:

EXT.R3(a) TRUE COPY OF THE APPOINTMENT ORDER OF THE THIRD RESPONDENT DATED 14.9.1998 AS HSA

EXT.R3(b) TRUE COPY OF MERIT LIST AND DATED NIL

EXT.R3(c) TRUE COPY OF THE SELECT LIST DATED 17.10.1998

EXT.R3(d) TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT APPROVING THE THIRD RESPONDENT'S APPOINTMENT AS SECONDARY SCHOOL TEACHER DATED 17.11.1999

EXT.R3(e)TRUE COPY OF GOVERNMENT ORDER G.O. (MS) NO. 29/91/G.EDN. DATED 27.2.1991 ISSUED BY THE GENERAL EDUCATION (HSE) DEPARTMENT.

EXT.R3(f) TRUE COPY OF G.O.MS. NO. 162/98/G.EDN. DATED 13.5.98 ISSUED BY THE GENERAL EDUCATION (T) DEPARTMENT.

EXT.R3(g) TRUE COPY OF THE INTERIM ORDER PASSED BY THE HONOURABLE SUPREME COURT IN SLP NO. 18236-37/1998 DATED 7.12.99

EXT.R3(h) TRUE COPY OF G.O.(RT) NO. 195/2005 DATED 13.1.2005

EXT.R3(i) TRUE COPY OF G.O.RT. NO. 5124 OF 2004/G.EDN. DATED 30.11.2004

EXT.R3(j) TRUE COPY OF THE RELEVANT PORTION OF THE DECREE IN DOLICHAN'S CASE DATED 14.11.2000

EXT.R3(k) TRUE COPY OF THE REJOINDER ALONG WITH AFFIDAVIT AND ASSNEXURE 15 THEREIN FILED BY PETITIONERS/APPELLANTS IN SLP. NO. 19055/1998 BEFORE THE SUPREME COURT.

EXT.R3(l) TRUE COPY OF ORDER DATED 8.11.2000 IN CONTEMPT PETITION 77 & 110/2000 IN C.A.NO. 7158 OF 1999.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 3515 & 21295 OF 2001

Dated this the 27th day of February, 2007

JUDGMENT

Since connected O.Ps. pertain to the same issue, that is, the claim of the petitioners for appointment to the post of Higher Secondary School Teachers under the promotion quota from High School Assistants, O.Ps. are heard together and disposed of by this common judgment. I have heard counsel appearing for the petitioners, Government Pleader and counsel appearing for the management. Parties and documents referred to in the judgment are as in O.P.No. 3515 of 2001.

2. Petitioner was appointed as High School Assistant on 14.10.1992, while the third respondent joined the School as High School Assistant on 14.9.1998. When Higher Secondary section started in the School, vacancies arose to the post of Teacher in the subject in which petitioner and third respondent are teaching. Ext.P9 issued by the Government provided for appointment of Higher Secondary School Teachers through direct recruitment and by

promotion from HSA in the ratio of 75:25. However, there is nothing to indicate in Ext.P9 that appointment has to be based on seniority. Therefore petitioner and third respondent were interviewed by the management for considering promotion as Higher Secondary School Teacher. Third respondent was placed No. 1 in the rank list and therefore she was appointed as Higher Secondary School Teacher on 26.10.1998. It is against this order that petitioner has approached this Court claiming that third respondent was ineligible to be considered for promotion post because she did not have sufficient service even for permanency as HSA.

3. Counsel for the petitioner contended that as on the date of arising of the vacancy, the third respondent was not appointed as High School Assistant. However, the contention of the third respondent is that when appointments were made, the third respondent was also a High School Assistant and she was rightly considered for appointment. Since appointment is based on selection from among qualified teachers through the process of interview in which petitioner also participated, petitioner has no justification to challenge the selection process after being ranked lower than the third respondent. The same question came up before this Court and a Division Bench of this Court vide judgment

in W.A.No. 1638 of 2002 and connected cases held that appointments have to be made based on selection through the process of interview and not based on seniority. The Supreme Court in M.M. DOLICHAN V. STATE OF KERALA, (2001) 1 SCC 151 held that if appointments were made pursuant to Govt. order dated 13.5.1998 (Ext.P9 in this OP) those appointments would continue and will not be annulled. Ever since the appointment on 26.10.1998 third respondent is continuing as Higher Secondary School Teacher in the same subject, while the petitioner is continuing as HSA. In the circumstances and in view of the decisions above referred, I do not think there is any justification to interfere with the appointment of third respondent.

O.Ps. are accordingly disposed of upholding the appointment of third respondent, and with direction to the Government to regularise the service of the third respondent and give arrears of salary and other service benefits to the third respondent. Since petitioner in OP 3515 of 2001 is already in the rank list, it is for the respondents to consider her case as and when vacancy arises.

(C.N.RAMACHANDRAN NAIR)
Judge

